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REPORTS

NOTES OF THE WEEK

Mistaken Identity

We were under the impression that our note at p. 493, *ante*, made it clear that fingerprints were not involved and that if there had been comparison of the defendant's fingerprints with those of the man whom he was wrongly thought to be, the mistake would not have arisen. However, we have had inquiries which indicated that there was an impression in some quarters that we were calling attention to an instance in which the fingerprint system had broken down. Our intention was, on the contrary, to point out how unlikely it was that a court would be misled about a previous conviction, when proper proof by fingerprint impressions would prove or disprove an allegation of a previous conviction.

In view of the inquiries that have been addressed to us we have ascertained the facts in more detail. As we thought, fingerprints were not involved at all. The mistake was made upon search of a name index. When the magistrates, having found the charge of larceny proved, asked if the defendant had any previous record, an inspector read from a police record, which had been attached to the prosecution file, details concerning a man of the same name. The record card which had been attached to the file did not refer to the man who was before the court. Unfortunately the record had not been verified or put to the defendant before it was read out in court. It was a mistake made in an office and was immediately admitted when it was discovered.

Taking Fingerprints

The defendant in the above mentioned case appeared in answer to a summons and so his fingerprints were not taken as they probably would have been taken if he had been arrested. Moreover, as he was not taken into custody the court could not have made an order that his fingerprints should be taken under s. 40 of the Magistrates' Courts Act, 1952. The limitation of the application of this section is sometimes criticized on the ground that it is not at all uncommon for a summons to be issued in respect of a serious indictable offence, while many persons charged with less serious offences are taken into custody. However, as the court and the police generally exercise sufficient discretion in the matter there do not appear to be many cases in which protests are made about fingerprints being taken.

We often think that the general objection that exists against the taking of fingerprints is rather overdone. They can be useful to the defence by clearing a man of suspicion of having committed a crime, or of having been previously convicted. They are not only an instrument to be used against a person; they are also an invaluable method of proof in the search for truth.

Conditional Discharge of Company

The Scarborough Evening News recently reported a prosecution of a limited company for an offence against the Shops Act which resulted in the making of an order of conditional discharge. A correspondent has invited us to comment on this as perhaps an unusual course for magistrates to take in the case of a corporation having regard to the provisions of s. 7 of the Criminal Justice Act, 1948.

We do not think this is very unusual, and we certainly see no reason to question the propriety of such an order on a corporation. In the instance referred to, the limited company appeared by solicitor. The court could comply with s. 7 (3) by explaining the meaning of conditional discharge, in ordinary language, to the solicitor (who no doubt would already be well acquainted with it), and any officer or servant of the company who might happen to be present would have the benefit of such explanation. The court obviously found it inexpedient to impose any penalty and also found it inappropriate to make a probation order. As to the latter point, it would indeed be inappropriate to place a corporation under the supervision of a probation officer, and very difficult for the officer to perform his duty to advise, assist and befriend the probationer! An order of conditional discharge presents no such difficulty and may often be appropriate.

Shops Act Anomalies

The Scarborough Evening News, in an article, calls attention to the difficulty experienced by shop-keepers in complying with the law about Sunday trading in a holiday resort, and the inconvenience to which holidaymakers may be put by the restrictions on what they may buy. The sale that was the occasion of the particular prosecution was of a plastic raincoat on a showery day. The newspaper gives a list of articles that may be sold on Sunday, either generally throughout the year by virtue of the provisions of the Shops Act itself, or under the provisions of the local Trading Order which allows the sale of certain articles on a specified number of Sundays. It appears that a person may buy a towel for bathing purposes, but not a waterproof against the onset of heavy rain. Of course it may be retorted that it is a reckless man who will go forth for the day, or even for a few hours, in such a summer as this, without ample provision against drenching rain, but there are always some optimists who, placing complete reliance on a favourable weather forecast, decide it is safe to trust in the prophets and take a chance. It is certainly rather hard on them if they are forbidden by law to obtain protection when the very shop that could supply it is open for the lawful sale of many other articles, but not the very one they need so badly.

This subject of Sunday trading bristles with difficulties, especially as it involves possibilities of religious susceptibilities being offended. Nevertheless, there does seem to be a widespread demand for the reform of Shops Act legislation generally, and particularly in relation to Sunday sales. There are many anomalies at present, and shopkeepers and customers both complain, but we confess we should not like to have to undertake the task of drawing up a new list of goods that might be sold on Sunday. We should probably perpetrate fresh anomalies.

Moving With the Times

The seemingly incredible is sometimes true. We think that most of our readers would refuse to believe that anyone driving a motor vehicle on the roads in this country today could be unaware that there are certain roads with dual carriageways. But *The Yorkshire Post* of July 23 reports a case in which such a driver figured. He was a gentleman aged 80, with the rank of Colonel, and he was fined £10 for dangerous driving and disqualified for holding a licence until he had passed another driving test. His explanation for having driven 500 *yds.* along the wrong carriageway on the Winchester bypass road was that he had never seen a dual carriageway before.

The possibility of encountering such a driver is an additional hazard to the many which drivers must be prepared to meet. It might be wise for an examiner to ascertain, before passing a learner, that he has heard of, and is aware of the rules of the road relating to, dual carriageway roads. The report we have referred to does not contain any statement about how long the defendant was said to have been driving before the incident in question. One is inclined to wonder if he is ignorant of any of the other essential "facts of life" relating to driving on the roads today. The value of the power to disqualify until a test is passed is obvious in such a case.

Falling Asleep

We have referred on other occasions to the cases of *Kay* v. *Butterworth* (1945) 110 J.P. 75, and *Henderson* v. *Jones* (1955) 119 J.P. 304, which make it clear that a driver who allows himself to be overtaken by sleep while he is driving is guilty, at the least, of driving without due care and attention. In *The Birmingham Post* of July 17 is a report of a case in which a defendant was charged with causing death by dangerous driving. His counsel urged that he either had a black-out or that he "nodded off to sleep" so quickly that he did not realize he was going to do so.

The learned Judge, in summing up to the jury, asked them if they thought that for some reason, and through no fault of his own, a driver could be fully alert and awake at one moment and the next second asleep? Or did they think that before a man reached the stage of dropping off to sleep he would pass through a warning stage of drowsiness when he ought to pull up and rest? The defendant was found guilty and he was also found guilty of driving while under the influence of drink. In addition to being fined a total of £250 he was disqualified for five years. The charge arose when the defendant's car swerved suddenly to the offside of the road, travelled along the pavement and hit and snapped off a lamp standard. A passenger died from the injuries he received.

We think it unlikely that it would be possible to convince a court that a driver in full possession of his faculties could fall asleep so suddenly as to allow no sort of warning to him that he ought to pull up before he was overcome by sleep. It is clearly not permissible for him to urge as a defence that because of drink he had taken either he didn't realize that he was drowsy or that he went to sleep more quickly than he otherwise would have done. For any such defence to succeed it would seem that there would have to be medical evidence of some abnormal condition of which the defendant could not very well be aware, and we have not yet heard of a defence being put forward on these lines. A "black-out," due to illness of any kind, is another matter.

The Cost of Abnormal Indivisible Loads

On our congested and often inadequate highways the crawling obstructions whose official title is "abnormal indivisible loads" are often a cause of delay to other traffic though no doubt the loads they are carrying are of considerable importance commercially and economically.

The press notice of July 30, 1958, issued by the Ministry of Transport and Civil Aviation about the Report on Roads in England and Wales, 1956–57, calls attention to the fact that the movements of these unusual loads are now "of the order of 20,000 a year. About 90 of these are over 150 *tons* or wider than 20 *ft.*" It is added that it has been necessary to strengthen or to reconstruct bridges on routes between the heavy industrial centres and the main sea ports and that during the year under review in the report 14 such schemes were in progress.

The cost of these 14 schemes is probably quite considerable, and one wonders whether anyone in authority has any say in deciding whether such loads must go by road or whether any alternative method of transport is possible. The only possible alternatives would seem to be rail or water, and if this is accepted it becomes apparent that in many cases neither alternative is possible unless the load can be transported piecemeal and assembled at the end of the journey. This "solution" may well create more problems than it solves.

We are left, therefore, with only the hope that the value to the country of these appalling loads exceeds the cost which they involve in actual expenditure

and in the delay and inconvenience caused to other people, including the police who have to make arrangements about them.

Justice

The first annual report of Justice, which covers the first 18 months of its existence, has just been published. It records quite an outstanding record of performance for a society of such recent birth—although the very nature of its work means that much frustration has been encountered. For example, the recent situation in Hungary resulted in three former Attorney-Generals, Sir Hartley Shawcross (chairman of Justice), Sir Frank Soskice and Sir Lionel Heald making offers to go to Budapest as observers of the first trials of the leaders of the October uprising. But no visas could be obtained; then an attempt (again unsuccessful) was made to secure the admission into Hungary of an Indian Judge. Yet although there was no tangible response, confidential reports from Hungary have suggested that many lives had been saved and sentences reduced by such protests.

Not all the society's work was so frustrating, however, and there can be no doubt it has been able to do much good work in many directions. Membership is mainly restricted to members of the bar and to solicitors but associate membership is also open to justices. The society urgently requires new members, and since no British lawyer or magistrate could find fault with the objects of Justice, readers might like to be reminded that Mr. Tom Sargant, 1 Mitre Court Buildings, Temple, E.C.4, is the secretary.

United States Air Force and Driving Licences

In the course of the hearing of a case which is reported in the *East Anglian Daily Times* of July 23, it was stated that it is now the rule that if a United States airman serving in this country is charged with a motoring offence his driving licence is taken from him by the American authorities pending the hearing of the case. Whether this should be done is a matter for the American authorities and it is not for us to comment on it in any way. Our only reason for calling attention to it is to make courts aware of the practice so that they may realise that the bringing of the charge in effect disqualifies the accused man at least until his case is heard, and that it is important, therefore, to arrange for such cases to be heard as promptly as possible. It is obviously undesirable and unfair that a man who is subsequently found not to have committed any offence should suffer such a "disqualification" for longer than is absolutely necessary.

Drivers' Signals

In the August, 1958, number of the Road Safety Office Accident Bulletin issued by the chief constable of Essex, appears the following: "On Signals—Drivers' and Riders' signals are to give information *not* instruction. 'I am ready to be overtaken' does *not* mean 'come on.'" This advice is clearly directed mostly to the overtaking driver, warning him that it is still his responsibility not to overtake until he can do so safely. But it is equally true that other signals are made to give warning of the intention of the signaller and are not an order to be obeyed, at all costs, by other road users. As the Highway Code expresses it, "Signal clearly, decisively and in good time. Fully extend the arm. *After signalling do not carry out your intended manoeuvre until it is safe to do so*" (the italics are ours).

There is no doubt that accidents often occur because the attitude of the signaller to other traffic is "I am *going* to turn right (or whatever his intention may be), just you wait." Courts hearing cases of careless or dangerous driving often have evidence as to whether signals were or were not given. It is just as important to know not only whether a signal was given but whether, if it was, it was acted upon reasonably by the person giving it or was used as a command which other drivers disobeyed at their peril. Since the question most frequently arises in cases where all the vehicles are on the move at varying speeds this second matter is often a much more difficult one on which to get clear evidence, but it is certainly one to which the attention of the court should be directed.

Health Services in the United States

The National Morbidity Survey Act provides for a continuing survey to secure accurate information on the amount, distribution and effects of illness and disability and on health services provided in the United States. The first household survey was recently completed in North Carolina when 1,000 households were interviewed. Information was sought on all illness and injury and on medical and dental care received by each person during the previous two weeks and on chronic conditions and hospitalization during the previous 12 months. Amongst other studies also initiated is one to obtain information on the medical and hospital care of persons who have died. It is hoped to collect information about 72,000 households over a two-year period and that by continuing this process valuable information will be available about the health problems of the American people.

Rate Payments by Voucher

The Times of August 22 quotes Councillor J. Johnston, the city treasurer of Glasgow, as saying when announcing an increase of 1*s.* 5*d.* to 28*s.* 1*d.* in the Glasgow rate that city ratepayers would soon be able to spread their rate payments over a year by the purchase of £1 vouchers. The chief rate collector of Glasgow stated that a similar scheme was already in operation at Clydebank and information was also given that in another smaller Scottish burgh a system was started last October of ratepayers being able to buy stamps which were subsequently tendered in settlement of rates.

It is rather surprising that at the present time special schemes to facilitate the payment of rates by instalments should be considered necessary but doubtless Glasgow city council are well satisfied that the need exists.

Schemes of this kind had a vogue in the period following the 1914–18 War, partly because of the hardship which it was thought fell on certain occupiers where direct rating was substituted for compounding and (in the late 1920's particularly) because of the difficulties caused by economic depression.

Postage stamps affixed to books, cards or forms of approved design and used for collecting small sums will be re-purchased by the Post Office, but commission of 10 *per cent.* is charged. In the earlier period to which we have referred commission was 2½ *per cent.* and advantage was taken of the arrangement by certain authorities who thus received much of their collections through local sub-postmasters. Some took other steps: for example, in 1928 the Easington R.D.C. in County Durham distributed 500 money boxes to ratepayers to assist them to save for the rates. The boxes were similar to those issued by certain banks and the rate collector kept the key.

These and similar schemes were born of economic difficulties. They were

contemporaneous with such news items as that giving the cost of unemployment relief in Birmingham where by 1924 £2½ million had been raised for relief schemes and a further sum of £1½ million was required for the next winter; in addition there was heavy borrowing by the guardians to meet the cost of relief.

But all such instalment schemes are costly to administer and for that reason alone cannot be lightly undertaken. Further, there is no guarantee that they will achieve their object, being dependent upon the decision of the ratepayers. Reports of the 1920's refer to the small numbers who took advantage of schemes and consequently to their abandonment.

Instalment payments without special devices of collection are, of course, accepted where rating authorities consider them necessary. It will be recalled that the White Paper on Local Government Finance (Cmd. 209) stated that greater efforts are needed to meet the convenience of ratepayers and urged rating authorities to enlarge and publicise their arrangements for paying rates by instalments.

Standing Joint Committees

Standing joint committees were established by the Local Government Act, 1888, and comprize equal numbers of representatives of the county council and the county justices. They are not subject to the control of the county council or of the justices in quarter sessions: this autonomy—and particularly financial autonomy—has over a long period of years been the cause of protests and attempts to secure alteration of the law. Bills have been presented to the Commons but have never reached the Statute Book: the earliest was in 1908.

County councils have resented their inability to prune the annual estimates of the standing joint committee when they considered it necessary and to exercise other controls over their expenditure: from the angle of financial control and responsibility they have seen no distinction between the standing joint committee and committees of the county council. Their objections have been strengthened by comparisons with the borough system, where the expenditure of the watch committee is subject to the approval of the borough council.

We understand that there is at last a strong possibility that agreement to certain alterations will be secured. The County Councils Association have been pressing for reform for the past two years and were prepared to attempt to secure the inclusion of a clause in the recently passed Local Government Act which would have had the effect of dissolving standing joint committees. The proposed clause was withdrawn after discussions with government departments and others and further discussions have since taken place with representatives of the Magistrates' Association. As a result it appears that there is broad agreement between the representatives of the two associations that standing joint committees should be replaced by police committees, which would have the same relationship to county councils as any other committee but which would consist half of members of the county council and half of justices appointed by quarter sessions.

There is of course no certainty that any action to implement the agreement will be initiated by the Home Office. We have not seen any recent official pronouncements from Whitehall: but in 1923 when giving evidence before the Royal Commission on Local Government it was said that the department were not aware of the need for any change and the opinion was further expressed that "there were palpable objections to removing the justices' responsibility for the police."

We find it difficult to follow the reasoning behind these expressions and in any case believe the paramount consideration to be that financial control should rest with the elected representatives of the people.

Virement in Central and Local Government

The power of switching between one estimate head and another is known as virement. It was referred to at some length in Parliament in July last when approval was sought for switches between Vote Heads of the Air Service estimates for 1956–57, provisionally approved by the Treasury.

The Civil and Revenue Estimates are presented in separate units known as Votes, such votes being divided into sub-heads, and there is power with the consent of the Treasury to use money underspent on one sub-head to discharge expenditure under another sub-head. In the case of the three Service Departments, however, additional latitude is granted as savings on one vote head can be used to meet excess expenditure under another vote head, subject to provisional approval by the Treasury and final approval by Parliament.

Recently the Public Accounts Committee criticised this practice on two grounds, firstly that it was undesirable to use savings on other Votes to meet excesses on the Works Vote, especially for new works started without provision in the original estimate, and secondly that works intended to be financed by borrowed moneys (in this case expenditure on additional married quarters) should not be financed out of voted moneys.

The practice of virement applies in local government although not in any uniform fashion. Those in favour of wide application argue that it is an incentive to economy: departments will seek out and apply all possible savings so that when excess expenditure occurs under another head they will not have to justify a supplementary estimate before the Finance Committee. This view, however, does not command universal acceptance, those who disagree contending that it is in fact an incentive to extravagance because estimates can be inflated and the money thus unnecessarily provided used for other purposes of doubtful value not in the original estimates.

It is commonsense that every device useful as an aid to economy should be accepted as a part of financial control. The usefulness of virement depends on a number of things, including the number of heads under which the estimates are prepared, the care and vigilance applied to the scrutiny of the draft estimates at budget time, and the rules under which virement is allowed.

The heads and sub-heads of the estimates would be in sensible, but not excessive detail if they followed those suggested by the Institute of Municipal Treasurers and Accountants in their proposals for standardization of accounts.

In some authorities the examination of estimates at budget time leaves much to be desired, being perfunctory and unorganized and resulting, if it results in anything, in the imposition of arbitrary cuts. Something akin to the Parliamentary Select Committee on Estimates, with its detailed review of services, is in operation in the better organized authorities: the system could be adopted by many more councils with advantage.

If the points we have mentioned are safeguarded limited virement may well

be allowed. A reasonable limit is to allow savings resulting from greater efficiency to go against unforeseen expenditure. Savings not so achieved and which have resulted from such causes as bad original estimating, or from falls in price levels, might well not be so allowed. In all cases the consent of the finance committee should be necessary because of that committee's duty to review all expenditure, whenever proposed.

MARRIAGE PRELIMINARIES AND PERJURY

By ROY H. WEEKS

If a man presents himself at the study of the vicar and tells him that he desires to give notice of his intention to marry an eligible spinster of the parish, it is not surprising that the vicar should require verbally or in writing to know the status of the applicant. If the applicant is already a married man, whose marriage is still subsisting, but he indicates that he is a bachelor, it is surprising that such a false representation does not bring him within the criminal law.

We are aware of a case where a married man courted and proposed to a single lady. She accepted his proposal and off they went to see the vicar. The vicar was told by the man, as was the lady, that he was a bachelor. The vicar completed a form of particulars which bore the heading "Notice of Banns." The man described himself on this as a bachelor. The banns were called on three successive Sundays; the lady bought her dress and ordered the flowers; the guests were invited. The man had no moral or legal justification for thinking that he was not doing wrong, because only a month or so before, the police had served upon him a summons for arrears under a maintenance order which his wife had obtained against him. Before the marriage day, however, the man was seen by the police. The marriage was off; the dress hung behind the door; the flowers remained to bloom elsewhere; the unfortunate lady was the only drooping bloom.

The statements obtained by the police seemed conclusive on the face of them that this man was guilty of a criminal offence. Accordingly, he was charged under s. 3 of the Perjury Act, 1911, "For that he, for the purpose of procuring a marriage, knowingly and wilfully made a false notice required under the Marriage Act, 1949, by describing himself as a bachelor. . . ."

This gave rise to the question of what "Notice" was required by the Marriage Act, 1949, and the answer is to be found in s. 8 which says, "No clergyman shall be obliged to publish banns of matrimony unless the persons to be married, at least seven days before the date on which they wish the banns to be published for the first time, deliver or cause to be delivered to him a notice in writing, dated on the day on which it is so delivered, stating the christian name and surname and the place of residence of each of them, and the period during which each of them has resided at his or her place of residence." The Perjury Act states that such a notice must be one which is "required under any Act of Parliament for the time being in force relating to marriage." What will be noticed from the wording of s. 8 of the Marriage Act, is that it does not "require" that such a notice shall be given. A clergyman could still act even without the notice; he has a discretion to dispense with it or accept a notice out of time.

The prosecution offered no evidence on that charge, accepting the view that the notice given to the clergyman did not come within the scope of s. 3 of the Perjury Act. Another point to be noticed is that s. 8 of the Marriage Act, limits the information to be supplied to the clergyman to name and place of residence, and period of residence. Nothing else. Therefore, if it had been contended that such a notice was "required" the fact that the man described himself as a bachelor when a married man would still not have been a material misdescription as it was information not required by the Act in that notice.

The prosecution then sought to proceed on a further charge under s. 3 of the Perjury Act, 1911, "For that he, for the purpose of procuring a marriage, knowingly and wilfully made a false declaration under the Marriage Act, 1949, by stating that he was a bachelor. . . ." The question now was whether his false declaration that he was a bachelor was such a declaration as he was required to make under the Marriage Act. It was argued by the prosecution that as the clergyman had made an entry in the Register Book of Banns from the notice signed by the man, and this register being a book required to be kept under s. 7 (3) of the Marriage Act, in the same form as that prescribed for a Register of Marriages under s. 54 of the Act, the marital condition of the man was material and was required, because the prescribed form included a column dealing with status. The column dealing with status appears only in a prescribed form for the Book of Marriages: there is no prescribed form for the Book of Banns. The Book of Banns produced to the court was a book supplied through stationers specifically for the purpose and on the cover exhibited the words "Register Book of Banns as required by Act of Parliament." This book merely showed a space for the names and residence. There was no column for status. In looking at s. 7 (3) in conjunction with s. 54 of the Marriage Act, it was asserted that because in s. 7 (3) it said "shall provide . . . a register book of banns . . . marked in the manner directed by s. 54 of this Act for the register book of marriages . . ." and because the form of the Register of Marriages had been prescribed and included a heading dealing with the status of the parties, it followed that that information was also required when the Register Book of Banns was entered. Therefore, to make a false statement which led to a false entry in the Register Book of Banns was an evil which s. 3 of the Perjury Act, 1911, was directed at.

In *Halsbury's Statutes,* 2nd edn., in the footnotes to s. 7 of the Marriage Act, is to be found the note "Unlike notice of marriage given to a superintendent registrar (*see* s. 27 (3)) no description of the parties is required and a misdescription is, therefore, immaterial." Section 27 (3) says: "A notice of marriage shall state the name and surname, marital status, occupation. . . ." What will be noticed is that s. 27 deals with "Notice of Marriage" whereas s. 8 deals with "Notice of Publication of Banns." This illustrates the fundamental difference between marriages solemnized in church and those solemnized by a superintendent registrar. In the former, there is the publicity of the banns which is regarded as safeguard enough if there are any impediments to a marriage, so that the actual declarations for procuring a marriage are

not made until the ceremony in church itself, and in the latter, where this safeguard does not exist, the statute purposely imposes a requirement as to status, etc., to bring any false statements made within the scope of s. 3 of the Perjury Act. On the one hand, therefore, you have the matters which go to the root of procuring a marriage, and on the other, merely matters necessary for procuring the publication of banns. By s. 28, a superintendent registrar shall not issue a licence unless a solemn declaration is made by the parties that he or she believes that there is no impediment or other lawful hindrance to the marriage. This is also the case where the banns are dispensed with on the grant of a licence by the bishop or archbishop. This declaration then required clearly becomes necessary where there is not the publicity afforded by the three successive Sunday calling of the banns in church, but where the banns are called then this declaration is not required until the actual marriage ceremony. Therefore, declarations made to the superintendent registrar and to a surrogate for a special licence are immediately brought within the scope of the Perjury Act, as being fundamental matters for the procuring of a marriage, but where the banns are to be called the preliminary to this does not create criminal offences if falsehoods are told. Some clergymen might feel it necessary to require information other than that as to status as a preliminary to the publication of the banns; there seems clearly to be a discretion for them to do so. Supposing information was required about the amount of money the parties had; how long they had been courting; could untruths told in answer to these questions give rise to charges of perjury? Clearly not, because they are not "required under any Act of Parliament for the time being in force relating to marriage."

On giving notice for the publication of banns all that is required by the Act is as contained in s. 8 of the Marriage Act, *i.e.*, christian name and surname, place of residence, and the period during which each of them has resided there. After the publication of the banns and when the marriage ceremony has been arranged the Register Book of Marriages will be completed and it is at that stage that other matters become material and would be subject to the Perjury Act if false statements are then made. The solemnization of marriage in church is on the part of the man and the woman the attestation in the presence of God and of the church of their consent and contract that they are lawfully able to do so, and on the part of the church its blessing on the union. Whereas, in the register office the civil law has had to step in, as it were, and create safeguards for society (s. 27 and 28 of the Marriage Act) not regarded as necessary by canon law.

The point which needs emphasis is that in a ceremony of marriage in church there are two stages, the procurement of the publication of banns and the procurement of the marriage itself: in the register office merely the procurement of the marriage. If for the purpose of procuring the publication of banns false particulars are given this would appear merely to create an undue publication. In *Halsbury*, 3rd edn. vol. 13, under the title "Holy Matrimony," "Preliminaries to Marriage," there is authority for saying that the rubric and the Marriage Act contemplate mention of the true names of the persons and of the parish or parishes in which they reside, but not of their descriptions; "mention of these is, therefore, not essential, and a misdescription is immaterial."

Would the action of our defendant amount to an attempt to commit bigamy?

The general rule which emerges from well established authority is that any overt act immediately connected with the commission of an offence and forming part of a series of acts which would constitute its actual commission if it were not interrupted or frustrated, would be an attempt to commit that offence. The overt act must be such as to be immediately connected with the intended offence, so that it would have been an actual cause of the offence. Acts which are merely in preparation, are not necessarily acts which could amount to an attempt. A man might say he is going to steal a car; merely buying a driving licence would not be an attempt, but caught in the act of opening a car door might be. Although the fact that an act is only the beginning of an attempt, and could not produce the desired result unless followed by other acts, does not prevent it from being an attempt. For example, the giving of a small dose of poison, which would not be fatal unless followed by other doses, may be an attempt to murder. It will be noticed that these illustrations indicate the positive causation with the offence attempted. Buying poison could not give rise to a charge of attempted murder, but administering in the way we describe could be.

Bigamy is committed when a person already married, marries any other person during the life of the former husband or wife. The view taken on the facts discussed in this article was that because there had been no act connected immediately to a ceremony of marriage but merely the calling of the banns, a charge of attempted bigamy would not lie. It has been said that the law leans towards the repentant and although an evil person may have every intention in his mind to perpetrate a crime, he may repent right up to the last second, provided he has committed no act directly connected and actually a part of the crime intended.

ADDITIONS TO COMMISSIONS

CORNWALL COUNTY

Doris Ellen Clara Spear, Weston House, Haye Road, Callington.

DEVON COUNTY

Mrs. Victoria Jacintha Fleetwood Ansell, Pillhead House, Bideford.
Mrs. Joan Crabtree, Kenmore, Cyprus Road, Exmouth.
Lt.-Col. George Maitland Edye, Langabeare Barton, Hatherleigh.
Brian Reginald Homer, 1 Westfield Terrace, Tiverton.
Sylvanus Lloyd Maunder, Barnsfield, Blundells Road, Tiverton.
Cyril Joseph Bosworth Robinson, Brookfield, Pinhoe.
Mrs. Amelia Maud Pinegar Taylor, The Vicarage, Newton Poppleford, nr. Sidmouth.

FLINT COUNTY

Mrs. Diana Sybil Bacon, Warren Bank, Broughton, nr. Chester.
Miss Sarah Edith Flynn, 18 Chapel Street, Flint.
Charles Michael McGowran, Flamstead, Cornist Road, Flint.
William Griffith Roberts, Faenol Fawr, Bodelwyddan, Abergele.

KENT COUNTY

Major De Symons Harry Lewis-Barned, M.C., Speedwell Platt, Barming Woods, Maidstone.

ST. ALBANS CITY

Thomas Gurney Mercer, Delmerend Farm, Flamstead, St. Albans.

STOKE-ON-TRENT CITY

Tom Byatt, Langley, Sandy Lane, Newcastle, Staffs.
Frederick Arthur Cholerton, 24 Stone Street, Penkhull, Stoke-on-Trent.
Neale Charles Harrison, Butterton House, Newcastle, Staffs.
John Thomas, 39 Upper Belgrave Road, Normacot, Stoke-on-Trent.

SWINDON BOROUGH

Edgar James Baish, 23 Tismeads Crescent, Swindon, Wilts.
Harold Victor Bond, 35 Wootton Bassett Road, Swindon.
Harold Diment, 17 Okus Road, Swindon, Wilts.
Ronald Jack Naish, Barrowdale, Baydon, Wilts.

RATE RATIONING AND THE GENERAL GRANT

The forthcoming replacement of percentage grants on major services by the new general grant has occasioned much speculation and some concern about the effect of the new system on the permitted future expenditure level of the services affected. It has been suggested in certain quarters that drastic and arbitrary cuts will be made by finance committees and councils, with the result that the work done will be severely curtailed. We are doubtful of the soundness of this view. There is little evidence of it in the estimates and forecasts for 1959–60 and 1960–61 now being submitted to Whitehall and, although it may be alleged that the temptation in presenting these figures was to over-estimate expenditure we believe both that the present estimates have been soundly based and that at a later stage of the present financial year when the grant allocations to individual authorities are made known drastic pruning of estimates will not take place. In other words our view is that the local authorities will continue to provide efficient services broadly at existing or improved levels: they may not be entirely uninfluenced by changes in the grant structure but consequential effects, if any, are likely to be marginal only.

How wide or narrow will be the margin it is impossible at this stage to say, but it is perhaps instructive to look back a quarter of a century to a situation where financial stringency was greater and more pressing than any likely to be caused by the new general grant. The Ray Committee Report on Local Expenditure had just been published. It recommended to be done what the present Minister of Housing and Local Government, with the assistance of Parliament, has now partly done, namely, the abolition of percentage grants and their substitution by "equitable block grants." Plus ça change . . . The arguments used by the Committee might well have been newly read by Mr. Brooke before his parliamentary advocacy of the general grant.

This was an important matter but it was not the main purpose of the Committee's creation and activities. These were stated in the letter of appointment signed by the Chancellor of the Exchequer, the Rt. Hon. Neville Chamberlain, to be a review of the whole field of local expenditure and subsequent recommendations for ensuring reductions in such expenditure. These duties the Committee carried out in no uncertain manner: any who have doubts about the advantages of the present age as compared with the past should re-read the proposals. The education service may be taken as an example. School staffs were to be reduced the aim being to raise the ratio to 30 children per teacher in county areas and 36·5 in urban areas: further, no head teacher was to be free from full-time charge of a class where a department had less than 200 children in average attendance. In addition the closure of a number of schools was recommended, school attendance staffs were to be cut and students assisted by loans instead of grants on the basis of new and less generous scales for the assessment of need.

In that cold climate spending committees sat down to consider the possible mutilation of their services, with finance committee and councils brooding in the background. Certain reductions of expenditure were made, the most common being a reduction of salaries and wages of municipal employees, but in general severe cuts in the standards of the services provided were not made. Nevertheless, within the field of manoeuvre left to them and because of general concern about the levels of taxation and rates local authorities investigated carefully, and experimented with, various suggestions designed to put their finances on a stable basis and to limit their demands for money to a minimum.

Some of these ideas have stood the test of time, others have proved impracticable, and some have not yet been tried.

The rationing of rates was tried by many authorities, led by Birmingham. Various criteria were adopted to fix the total rate level: in Birmingham the city council resolved, so far as they could commit their successors, that they would not levy a rate of more than a specified poundage during the succeeding years. Other authorities decided that expenditure should not be allowed to increase in greater ratio than the rateable value of their areas, thus enabling rates to be kept at the same poundage figure. The total rate having been thus pre-determined a further variety of expedients was used to ensure that money would be available to meet the commitments envisaged by the estimates. The first and most obvious was to see what hen roosts could be raided, the most rewarding being the funds of the trading undertakings: some authorities made the consumers or customers pay to help the ratepayers but others absolutely refused to do so. Then came the appropriation of rate fund balances, which was not in practice such a once for all operation as a theoretical view might indicate: in fact in many authorities the balances shared the remarkable characteristics of the widow's cruse of oil, although doubtless for different reasons, among which we believe underestimation of expenditure and sometimes of 1*d.* rate products to have been included. Such aids having been brought in it was still very often necessary to cut estimates: this painful process was effected in a number of ways. There was the straight percentage cut, adjusted according to the rate of grant on each service, there was the system of detailed cuts made by the finance committee, and there was the allocation to each committee of a specified proportion of the agreed rate poundage, each one in effect being rationed to an amount equal to the previous year's estimate plus its relative share of additional money provided by new rating assessments.

In addition to these procedures various schemes were examined and some put into practice designed to help in the stabilization of rates. The use of long-term capital programmes was advocated: these forecasts are still made but suffer from two serious defects. The first is that it seems impossible not to over-estimate what will be accomplished and secondly what work can be done on most major services is now entirely in the hands of the Government. There was urged also the creation of various funds designed to iron out inequalities of annual expenditure under certain heads, such as repairs and renewals of buildings, plant and machinery. Coventry secured local act powers to set up a capital fund. The use of funds of this sort has largely increased since the Local Government (Miscellaneous Provisions) Act, 1953, gave general powers to local authorities to establish them: so far as they go they are admirable. A rates stabilization fund was suggested but the necessary powers were not obtained. If the general grant periods subsequent to the first are long enough this idea might have attractions in the future.

Under the general grant system, as in the past, the broad level of local authority expenditure will be determined very largely by national policy and controlled from Whitehall:

we cannot, for example, imagine any local education authority being allowed to dismiss large numbers of its teachers and increase the size of its classes.

A policy of rate stabilization can only be effective against a background of stable money values and stable requirements of services. Neither condition exists at present and therefore, apart altogether from a different social outlook, rate rationing as tried 25 years ago is impracticable today. If this is true it still does not rule out in theory substantial estimate cuts by finance committees when dividing out the amount of the general grant: in practice, however, we believe public opinion to favour better services rather than rate cuts or even stabilized rates. We do not therefore share the apprehensions of some opponents of the general grant under this head.

But even if services are not cut, estimates may still be. The Ray Committee thought that substantial economies in local administration could be made: are we certain today that there is no local authority field in which Parkinson's law operates? There are still worthwhile savings of magnitude possible without impairing service to the public, and much investigation remains to be done in this field.

LOCAL GOVERNMENT FINANCE—FOR THE BEGINNER

INTRODUCTION

Before considering the subject of finance from the local government aspect it is advisable to appreciate clearly the most elementary and general principles.

A good starting point is to recall the following piece of advice given to David Copperfield by Mr. Micawber:

> "Annual income twenty pounds, annual expenditure nineteen nineteen six, result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery."

THE PROBLEM OF FINANCE

Finance, therefore, is not only a subject, but a problem. It is a universal one. Everyone has to cope with it and attempt its solution according to the particular circumstances of the case.

The individual receives an income out of which he must meet his living expenses, whether he be the office boy or the cabinet minister. For the average family the position is similar, but things tend to become more complicated—as most parents will readily agree. Again the club or society must match its expenditure with its income and the business concern, from the small retail shop to the largest industrial organization, must not only do this but obtain a surplus (*i.e.*, profit) if it is to continue to flourish.

The local authority, and indeed the nation as a whole, must have regard to the fundamental principle of finance, that expenditure must be balanced against income.

In all these cases the problem will be affected by the answer to the following questions:

(*a*) Is the expenditure static or is it variable?
(*b*) Is the income fixed or can it be increased at will and, if so, is there any limit to the possible increase?

THE SPECIAL POSITION OF CENTRAL AND LOCAL GOVERNMENT

Central Government Finance

Dealing first (rather briefly) with the finance of central government it may be noted that expenditure is dependent upon the policy of the government, which also fixes taxation. If government expenditure increases, in general, taxation must also increase to produce the additional income required. Thus the government may decide to spend more on the social services, or upon national defence, or may make larger grants to local authorities, and unless economies can be effected in other directions may have to increase the income tax, or the tobacco or beer tax.

There is, of course, no limit to taxation except by pressure of public opinion, to which most governments are sensitive. The public do not like high taxation and consequently the government have to decide how far they can go with their spending and taxing. We may ask, by way of illustration, why this country has not launched a rocket into space as the Russians and Americans have done, and as we could undoubtedly do if men and materials were concentrated sufficiently for such a project. The answer lies in the problem of finance, for it would be a costly business. Would the results be commensurate with the cost? Are the public prepared to pay for such an effort? Evidently, the government think not. In Russia and America the cost will be spread over a larger population, or to put it in the words of the economists, these countries will have to devote a relatively smaller proportion of the national income to this project than we should have to do, and so they are at an advantage.

A more ancient example may be quoted which shows another side of the picture. Why were the pyramids built in spite of the magnitude of their cost in manpower and materials? No doubt there were people in Egypt at the time who thought they were too costly and an unnecessary public work, but the Pharaohs in their power and wisdom (or lack of it) decided to go ahead with complete justification, no doubt, according to the archaeologists of future generations.

The lessons from these examples may be summarized by stating that considerations of finance should not be allowed to obstruct vital and urgent needs, but should a government (central or local) have the desire to launch metaphorical rockets into outer space, then financial considerations should act as an effective damper to their enthusiasm.

Local Government Finance

Although there are some essential differences, many of the financial problems of local authorities are similar to those of the central government. Expenditure is not static and there is, in general, no limit to the rates which may be levied although public opinion, through the votes of the electors, may make itself felt.

Within the scope of their statutory powers and duties local authorities have to decide how to use their available resources to the best advantage in providing the services for which they exist.

This leads to a consideration of the position occupied by finance in local government, thus:

(*a*) as secondary to policy, or
(*b*) as a determinant of policy.

A proper blend of these two ideas is needed because reasonable services must be provided with scope for necessary improvement and expansion, and for prompt action in an emergency, but on occasions it will be necessary to pause to count the

cost before rushing in to do this or that. Without the right perspective it is so easy to put the cart before the horse, especially when we are not all agreed which is the cart and which the horse. Some things may be necessary and others merely desirable and there are varying shades of necessity and desirability. Two people will rarely agree exactly what is vital and urgent and what is no more than desirable, and the right judgment is not the exclusive possession of any group or class of people. In this respect the man in the street sometimes shows more common sense than the expert.

This, then, is the main problem of local government finance and will be examined in greater detail in subsequent articles.

(To be continued)

MISCELLANEOUS INFORMATION

RATES AND PRECEPTS, 1958–59

The Institute of Municipal Treasurers and Accountants and the Society of County Treasurers have issued their valuable returns giving details for 1958–59 of rates levied in the county boroughs and a wide selection of county districts, and particulars of estimated county expenditure to be met from rates and grants.

Total estimated rate and grant-borne expenditure per head of population in the counties varies in England from £30 11*s.* 9*d.* in Hereford to £24 3*s.* 3*d.* in Devon, the average being £26 12*s.* 5*d.* In Wales the highest charge of £45 1*s.* 9*d.* per head is in Radnor and the lowest of £27 5*s.* 2*d.* in Flint with an average of £30 13*s.* 1*d.* Government grants shoulder a considerable but unequal part of these burdens in all counties, the ultimate charge to the ratepayers in the counties mentioned being reduced by their influence to the figures shown below:

Authority	Total Expenditure	Expenditure Borne by Ratepayers	
		Amount	Per Cent.
	£	£	
Devon	12,460,000	6,203,000	50
Hereford	3,906,000	1,244,000	32
Flint	4,012,000	1,811,000	45
Radnor	863,000	229,000	27

The return issued by the Institute covers all the county boroughs and metropolitan boroughs, 224 non-county boroughs, 207 urban districts and 129 rural districts. It shows that average poundage rates increased in 1958–59 by 5*d.* or 6*d.* except in the metropolitan boroughs where the average increase was 3*d.* Average levy in all types of borough is 19*s.* 4*d.*, the urban districts are a penny less, and the rural districts comfortably below at 17*s.* 5*d.* The return particularizes the rate poundage required in each authority for each of the major services, shows the effect of grants received and of transfers to and from trading undertakings. It contains a mass of information and is worthy of careful study. Space forbids detailed comment here: we mention only the one item of housing as an example. The varying rent policies followed by different authorities are well illustrated by these county borough examples:—

Authority	*Rate Levy for Housing*
	s. d.
Merthyr Tydfil	4 8
Gateshead	4 6
Bootle	3 7
Cardiff	Nil
Canterbury	Nil
Dudley	Nil
Tynemouth	Nil

REMUNERATION OF DOCTORS

An exhaustive memorandum has been submitted to the Royal Commission on Remuneration of doctors and dentists jointly by the several local authority associations and the London county council. Quite apart from the value of the memorandum to the Royal Commission it will be very useful for future reference as showing in considerable detail the basis on which the remuneration and conditions of service of local authority medical staffs have been fixed. In fact they work under the conditions of service applying to chief officers generally.

The memorandum criticizes the remuneration policy of the British Medical Association as set out in the report which was adopted by the representative body of the association in 1956. The local government bodies consider that the rate of pay for doctors in local authority service must be the rate of pay for what they are doing and not, as implied in the B.M.A. memorandum, the rate of pay for what other doctors are doing. It is considered that any fixation of salary by reference purely to the remuneration of doctors in other spheres, whether general practitioners in the national health service, or otherwise, would result in alterations of remuneration in medical employment, automatically sparking off compensatory alterations in the remuneration of local authority doctors and consequently in that of local government officers generally. We agree that this, besides being inflationary, is obviously undesirable.

REGISTRAR-GENERAL'S QUARTERLY REPORT

The Registrar-General's report for the quarter ended March, 1958, gives information as to causes of deaths together with provisional figures for the year 1957.

Accidental deaths registered in the quarter totalled 4,585, as compared with 3,526 for the March quarter of 1957. There were 2,206 deaths due to accidents in the home, 1,656 to transport accidents and 723 to other accidents. The comparable figures for the March quarter of 1957 were 1,776, 1,196 and 554 respectively. The death rate from tuberculosis of all forms was 142 per million population compared with 117 in 1957.

During 1957 deaths from influenza totalled 6,715 as compared with 3,626 in 1956 and 3,983 in 1955. Deaths from acute poliomyelitis numbered 225, an increase of 111 over the 1956 figure but 16 less than in 1955. Deaths from coronary heart disease continued to increase, from 70,597 in 1955 and 74,790 in 1956 to 76,321 in 1957.

Infant mortality continues to decline—from 24·9 *per cent.* in 1955 to 23·1 *per cent.* in 1957.

Unlike some other countries there has however been no reduction in stillbirths and deaths of infants under one week of age. The perinatal mortality rate was 38·3 for both 1950 and 1955. The countries with the lowest rates in 1955 were: Norway 25·9; New Zealand 27·8; Sweden 28·4. Portugal had the highest rate.

INSTRUCTION FOR MAGISTRATES

Newly appointed justices, thanks to the work of the Magistrates' Courts Committees and of the Magistrates' Association are given full opportunity of gaining a good working knowledge of their powers and duties.

We have before us an attractive programme of lectures arranged by the Hampshire Magistrates' Courts Committee for the period September to November, which experts will deliver on a variety of subjects. Visits have also been arranged to approved schools, remand homes and penal institutions. Magistrates are being reminded that they are entitled to claim travelling expenses in accordance with the Justices' Allowances Regulations incurred in attending the lectures, which will be given at Winchester.

OCCUPATIONAL PENSION SCHEMES

The Phillips Committee on the economic and financial problems of the provision for old age recommended in their report that statistics should be collected about occupational pension schemes. Information on this subject is of special interest now that the Labour Party have made proposals for a general superannuation scheme to replace the present national insurance retirement pension scheme and it is believed that the Government has also an amending scheme under active consideration.

The Government arranged, therefore, for the matter to be studied by the Government actuary and his report was published recently. It is estimated that there are some 37,500 occupational pension schemes operated by industry and commerce. The Government actuary obtained information from a sample of 1,210 employers together with data from the records maintained by the Board of Inland Revenue of schemes known to that department.

It is estimated that some five million men are covered by private schemes together with some 3¾ million in the public service and nationalized industries. Thus nearly one-half of employed men

have some provision for pension other than those under National Insurance.

The majority of retirements in the private schemes are in the age-group 65–69 for men and 60–64 for women, with a strong emphasis on the first age in the group. The percentage distribution of retirements by age varies to some extent according to the policy of the employer.

In pension schemes in the public service and in the nationalized industries compulsory membership is almost universal for new entrants; in other schemes voluntary and compulsory membership are fairly evenly balanced, but about one-fifth of the employees covered are in schemes where the pension is not defined clearly or simply.

In many private schemes no contributions are required from the employees. Where the employee does contribute, the method of assessing what he should pay varies widely. Uniform percentages of salary or wages are customary in the public service and nationalized industries but they are less common in private schemes. Employers almost always meet at least part of the cost of their pension schemes. Usually they are committed to meeting the balance of cost after taking account of the contributions of the members.

The right to leave service voluntarily five or 10 years before minimum retirement age and to draw reduced benefit immediately is granted to the majority of members of insured schemes. Special provision for deferment of retirement, usually up to a maximum of five years, with increased benefits is made in all schemes for the staff of the public service and nationalized industries.

Arrangements for the payment of transfer values are not mentioned in insured schemes although the Government actuary believes that the transferring employee almost invariably has the right to take with him the policy representing his own contributions and frequently is entitled also to the contract secured by the employer's contributions on his behalf. In private non-insured schemes only about one-quarter of the members may benefit from transfer arrangements, and even this is almost invariably at the discretion of the employer.

MAGISTERIAL LAW IN PRACTICE

RIDING A BICYCLE TO THE COMMON DANGER CAN THE POLICE PROSECUTE?

A case of some interest was disposed of by the magistrates sitting at Castle Eden, County Durham, recently. We are indebted to Mr. Stanley Lambert of Messrs. S. & C. Lambert, Solicitors of Sunderland, for the following report.

The police prosecuted two infants under s. 74 (2) *of the Public Health Act,* 1925.

The summons was worded that they "did unlawfully ride a pedal cycle to the common danger of the passengers in . . . Road, contrary to s. 74 (2) *of the Public Health Act,* 1925."

There were two summonses which were identically worded.

In each case the information was laid by the Superintendent of the division.

Mr. Lambert appeared for the defendants.

The police inspector who was prosecuting, in his opening to the magistrates, said that he had three witnesses and one was a police constable.

Mr. Lambert made a request that the police constable should be the first witness.

In his evidence this officer said under cross-examination, that he did not see the occurrence. That an accident had been reported to him and he understood that this accident happened when the two defendants were riding their pedal cycles out of a welfare park in a colliery village and onto the main road.

It was alleged that they went straight onto the road without stopping and that a motor car struck one of them.

Mr. Lambert then submitted to the magistrates that the police must show a written consent of the Attorney-General to prosecute, otherwise the prosecution was bad.

He drew the attention of the court to s. 235 *of the Public Health Act,* 1875, *and s.* 298 *of the Public Health Act,* 1936. *He said that the restrictions on the right to prosecute provided that proceedings should not be taken by any person other than the party aggrieved or by a council or a body whose function it is to enforce the provisions; the exception being that written consent of the Attorney-General could be given to any other person.*

Section 253 *of the Public Health Act,* 1875, *is similar to s.* 298 *of the Public Health Act,* 1936.

The police argued that proceedings may be instituted by a constable to whom power of arrest is conferred (Jobson v. Henderson (1900) 64 *J.P.* 425 *and s.* 27 *of the Criminal Justice Administration Act,* 1914).

Mr. Lambert pointed out that s. 253 *of the Public Health Act,* 1875 *did not give any power to the police to prosecute without written consent of the Attorney-General.*

He argued that the police officer was not an aggrieved person.

The magistrates considered the arguments and dismissed both summonses without calling any further evidence.

Section 74 (2) of the Public Health Act, 1925, provides that "if any person rides or drives so as to endanger the life or limb of any person or to the common danger of the passengers in any street, not being a street within the Metropolitan Police District, he may be arrested without warrant by any constable who witnesses the occurrence, and any person who rides or drives as aforesaid shall be liable to a fine not exceeding five pounds."

Section 253 of the Public Health Act, 1875, provides that "proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General. Provided, that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades or offensive trades authorized to be taken by a local authority in respect of any Act on default committed or taking place without their district, or in respect of any house building or manufactory or place situated without their district."

The 1875 and the 1925 Acts are to be construed as one (s. 1 (3) of the 1925 Act). Section 253 of the 1875 Act remains unrepealed in its application to the 1925 Act (Public Health Act, 1936, sch. 3).

Jobson v. *Henderson* (1900) 64 J.P. 425, was not followed in *Sheffield Corporation* v. *Kitson* [1929] 2 K.B. 322. Nevertheless we agree with the opinion expressed by the learned editors of *Stone's Justices Manual* (*see Stone* (1958) vol. 2, p. 1959, note (u)) that it is only where the police witness the occurrence and therefore have power of arrest that they can proceed without being restricted by the provisions of s. 253.

In the Metropolitan Police District riding or driving to the common danger may be dealt with under s. 54 (5) of the Metropolitan Police Act, 1839, and the provisions of the Public Health Acts do not apply.

Barnet Press. June 14, 1958.

SUMMONS WAS NOT CORRECTLY MADE OUT

"I am not criticizing anyone. We have just been lucky," said Mr. D. Kilvert, a solicitor, at Barnet court on Wednesday after the bench had dismissed a summons against his client, Miss Hilary Margaret Philpott, of Willow End, Oaklands Road, Totteridge.

Miss Philpott was summoned for failing, while driving a car, to accord precedence to a pedestrian on a Totteridge Lane crossing near Longlands Drive. Mr. Kilvert successfully argued that the summons had not been correctly made out. It did not, he said, refer to the pedestrian-crossing regulations.

"The rule says that there should be reference to the regulations and that has not been done," he said.

The chairman, Mr. C. H. Knifton, said that the bench agreed with Mr. Kilvert's submission and the summons would be dismissed.

The rule referred to by Mr. Kilvert is r. 77 of the Magistrates' Courts Rules, 1952, which deals with the form in which the offence may be stated. Paragraph (2) of that rule says, "If the offence charged is one created by or under any Act, the description of the offence shall contain a reference to the section of the Act, or, as the case may be, the rule, order, regulation, by law or other instrument creating the offence.

Section 100 of the Magistrates' Courts Act, 1952, provides that:

"1. No objection shall be allowed to any information or complaint, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in

form, or for any variance between it and the evidence adduced on behalf of the prosecution or complainant at the hearing of the information or complaint.

2. If it appears to a magistrates' court that any variance between a summons on warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the court shall, on the application of the defendant, adjourn the hearing."

Mr. Kilvert may have been lucky, as he said, for the defect in the summons was a defect in form which might have been cured by amendment, either there and then or on adjournment. But where the statute (or regulation, etc.) is not quoted, and the omission may well have deceived or misled the defendant, it may be proper for the case to be dismissed. *Atterton* v. *Browne* (1945) 109 J.P. 25.

Liverpool Daily Post. June 11, 1958.

EMBASSY CLERK IMMUNE

A clerk in the Greek Embassy in London and his 15 year old son were held by Mr. Justice Harman in the Chancery Division yesterday to have diplomatic immunity and so not to be subject to the jurisdiction of the court.

He set aside proceedings against the man which had been started by his English wife to have his son—her stepson—made a ward of court.

The Judge, who directed that in the interests of the child, no names should be disclosed, said the boy's mother was killed in a motor accident in 1947. His father married his present wife in 1951 in Athens. She naturally took charge of the boy and since 1954 he had been attending English boarding schools.

The father obtained employment in the Greek Embassy in 1956 and in the same year he and his wife parted. He now wanted his son to continue his education in Greece. His wife objected.

To a large extent the father had handed over control of the boy to his wife but he had paid school bills and had not surrendered his paternal rights. He was undoubtedly entitled to diplomatic immunity from suit or legal process and such immunity extended to his son as a member of his family.

We dealt with the question of diplomatic privilege at p. 795 of our 1957 volume.

In this case Mr. Justice Harman said that from s. 3 of the Diplomatic Immunity Act, 1708, he did not doubt that immunity extended not only to ambassadors but to their families as well. It was clear from Lord Phillimore's opinion in *Engelke* v. *Musmann* [1928] A.C. 433, at p. 448, that his view was that the word "family" included "personal family." This immunity of personal family must extend to the personal family of the staff of the ambassador.

Concluding his judgment Mr. Justice Harman said, "It is true that the father has to a large extent handed over the control of the infant to the stepmother, but has he so far handed over his paternal rights as to make the boy not a member of his family? I do not think on the facts that I can say that, and therefore I conclude that the boy is a member of the family of the father, and that he, like the father, also has immunity." (*See The Times* Law Report, June 10, 1958.)

ANNUAL REPORTS, ETC.

SHEFFIELD PROBATION REPORT

We have noted from other reports that two years is regarded in many quarters as being normally the most suitable period for a probation order. In his report for 1957 Mr. Basil Davies, principal probation officer for the city of Sheffield, records this as his own opinion and states that out of 474 probation orders current at the end of the year, 368 were for two years. Of the 474 cases 341 had never previously been on probation, 107 had been on probation once previously, 20 had been on probation twice previously and six had been on probation three or more times previously. Some of the case loads appear to be rather too heavy.

Of the completed cases about 80 *per cent.* could be considered satisfactory. There was a considerable drop in the number of committals to approved schools but a considerable increase in the number of committals to borstal.

The report states that inasmuch as there is a police court missioner and a Marriage Guidance Council in Sheffield, the probation service avoids matrimonial reconciliation work until asked to intervene by the magistrates. Nevertheless, it is probably fair to say that each probation officer has on his or her hands at any given time two or three matrimonial cases. Having once made contact with the probation officer there is a tendency for the family to return over a period of years for advice on this or that matter. It seems that when the magistrates adjourn a case for the purpose of exploring the possibility of reconciliation the parties sometimes fail to understand the purpose and show considerable resentment. Doubtless the probation officer soon enlightens them, but it would seem well worth while for a careful explanation to be given by the bench. Perhaps this is often done but without its being properly understood, and it may mean that the magistrates will have to go into rather more detail than ought to be necessary.

An illustration of valuable co-operation given by the local authority is an agreement between it and the probation committee that corporation cars may be used by probation officers in emergencies. These are used only by officers who cannot drive or in cases of serious emergency.

COUNTIES OF PERTH AND KINROSS: CHIEF CONSTABLE'S REPORT FOR 1957

Establishment 124, actual strength 124 is the satisfactory position in this force, reached by the recruitment of 11 men with only 10 losses. The special constables outnumber their regular colleagues by well over two to one. Their strength on December 31, 1957, was 295.

Crimes and offences reported during 1957 numbered 3,103, compared with the 1956 total of 3,051. The offenders were traced in 2,284 cases, 1,893 cases resulted in proceedings before the courts and there were 1,696 convictions. One hundred and twenty-two juvenile offenders were proceeded against, 24 more than in 1956.

There was a large and unaccountable increase in the number of cases reported of drivers or persons in charge of motor vehicles, who had had too much to drink. The 1957 total was 79, the highest ever recorded since the Road Traffic Act, 1930, came into force. The total for 1956 was 30. Proceedings were taken in 60 of the 79 cases, and six of them had not been disposed of on December 31. Of the 60, 50 were found guilty, two not guilty, two not proved and in six cases the proceedings were dropped. Fifteen of the guilty persons were sent to prison, so that the increase in the number of such offenders certainly does not seem to be due to over lenient treatment by the courts.

Other road vehicle offences were fewer in 1957 than in 1956; reckless or careless driving dropped from 564 to 529, speeding from 489 to 318, traffic signs from 36 to 16 and no insurance from 53 to 33. These figures make all the more remarkable the increase in the s. 15 and s. 9 cases previously referred to. Other offences of drunkenness showed a decrease, 124 persons being prosecuted for drunkenness, with or without disorder, against 167 in 1956.

The numbers killed, seriously injured and slightly injured in 1957, in road accidents, were 24, 252 and 371 respectively. The comparable figures for 1956 were 25, 219 and 405. In 901 accidents in 1957 there was no personal injury.

In his comments on the accident figures the chief constable notes that there were 176 fewer than in 1956, but that nearly 85 *per cent.* of the decrease occurred during the first three months of the year when petrol was rationed, there were fewer vehicles on the roads and drivers were driving more slowly to conserve their petrol. July and August were the two worst months for accidents.

In 23 cases of sheep worrying by dogs farmers lost 16 sheep killed and had 23 injured. Sixteen dogs were traced as being responsible and four of them were destroyed.

NORTH WALES PROBATION REPORT

Very high percentages of success are claimed in this area: 74 *per cent.* for males and 87·5 *per cent.* for females. This may in part be due to the comparative absence of large towns, which so very often constitute a severe problem as regards delinquency. Certainly these figures scarcely support the view advanced by Mr. M. W. Hutchings, the principal probation officer, that more care might be taken in selecting cases for probation: such a high degree of success scarcely suggests that wrong material is selected by the benches.

Individual case loads, compared with some other districts we have come across, are reasonably low; and this may be a powerful contributory factor to the success achieved by the officers. No one case load is as high as the 60's, and it is to be hoped that a similar state of affairs may eventually prevail over the country as a whole, for successful probation and mass production methods do not go together.

A good deal of activity is reported on the matrimonial front, and it is interesting to note that Mr. Hutchings finds that the sanctity of marriage is seriously under-emphasized these days, and that the ease with which recourse may be made to financial aid from public funds is an encouraging factor for those more eager to break up their home than to try again. He takes the view that this is a serious bar to successful reconciliation—an interesting commentary on one aspect of the welfare state.

COUNTY BOROUGH OF BOURNEMOUTH: CHIEF CONSTABLE'S REPORT FOR 1957

Twenty-one losses and 21 gains left this force on December 31, still 15 below the authorized establishment of 240. The losses included 13 resignations and one dismissal. The complement of women police is only six, one sergeant and five constables. They are reported as contributing greatly to the efficient working of the force.

Under the heading of finance are given figures which show that the cost of the force to ratepayers, per head of the population, has risen from 8*s.* 7*d.* in 1948–49 to approximately 16*s.* 10½*d.* in 1957–58; but with the multifarious duties which the police are called upon to undertake, on behalf of their fellow citizens, the ratepayers may well consider that their money is, in this respect at all events, well spent.

The increases in crime shown by the figures for 1955 and 1956 continued in 1957 when a total of 1,740 indictable offences were recorded, compared with 1,527 in 1956. Thefts of pedal cycles increased from 77 to 109, and larceny from unattended vehicles from 205 to 258. Breaking offences of all kinds showed a total increase of 25 *per cent.* Forty-five point nine one *per cent.* of the offences were detected and 463 persons were dealt with for them. There was a slight decrease in the number of juveniles dealt with for such offences, from 138 in 1956 to 127 in 1957.

Non-indictable offences were fewer, 3,143 compared with 3,813. In addition there were 508 cautions, 428 of them for motoring offences. The drop in the number of offences is accounted for, in large part, by a decrease from 3,035 to 2,395 under the heading "motor vehicle offences."

Offences of drunkenness increased from 52 to 82 and there was also a regrettable increase from 11 to 20 in the offences of driving or being in charge of motor vehicles whilst under the influence of drink.

The total number of road traffic accidents was 1,102, a slight increase on the 1956 figure of 1,058. Eight hundred and ninety-five people were killed or injured in these accidents and it is remarkable that 240 of them were pedal cyclists and 220 were motor cyclists. Pedestrians killed or injured numbered 167. The total number of killed was 10.

Amongst their miscellaneous duties the police dealt with 5,269 reports of lost property and took charge of 4,637 articles deposited with them by honest finders.

ESSEX WEIGHTS AND MEASURES REPORT

Most reports of weights and measures departments refer to changing methods of trading and in particular to the use of self-indicating weighing machines. In his report for the year ended March 31, Mr. F. W. Horsnell, chief inspector of the Essex county council, refers to the rapid decrease in the use of loose weights. Of the new machines he says that where inaccuracy is detected it is generally due to failure to keep them properly levelled.

A new machine to deal with coal and coke is described in the report. During the year, a large firm of coal merchants brought out an "auto-bagger" which consists of a large vehicle on which coal or coke is carried in bulk. Machinery fitted to the vehicle enables the fuel to be automatically weighed in quantities of one hundredweight at the purchaser's premises thereby not only saving labour in handling but also permitting the purchaser, should he so desire, to witness the actual weighing of the delivery. As there were many prosecutions for short weight coal and coke any machine which can improve methods of delivery would be welcome.

Mr. Horsnell calls attention to the need for control of the sale of some articles not at present covered by legislation and perhaps surprisingly to some people, he instances manure. One householder bought what purported to be 50 bushels of processed horse manure for which she paid £14. A weights and measures inspector was called and found the measure to be 37·2 bushels. Unfortunately the vendors were not traced. In another case a contractor was supplying nurserymen on the basis of weight and one of them became suspicious about the tare weight of the vehicle used. The weighbridge that had been used was found to be incorrect and put out of use pending repairs. Investigations showed, however, that tickets from this weighbridge were still being used bearing dates subsequent to that on which the use of the weighbridge was stopped. Eventually proof was obtained that the contractor was purchasing from the weighbridge keepers of the machine in question large numbers of weighbridge tickets stamped with fictitious weights when, in fact, no weighings had been made. These tickets were shown to the purchasers but retained by the driver on the grounds that they were required to assist in calculating the total amount purchased by the contractor—in fact, the same tickets were, on occasions, used to cover more than one load. Prison sentences and fines resulted. Another case concerned the sale of scrap metal. A dealer who had his vehicle weighed, full and empty, made a practice of including the spare wheel when weighing the lorry gross and then leaving the spare wheel in the road when he came to obtain the tare weight. He was thus "selling" the weight of the spare wheel with each load. Proceedings were taken and he was fined.

So far as food is concerned there was little evidence of adulteration, though there was some in respect of liquid milk, and even here the extent of the adulteration was not serious and only six prosecutions were undertaken.

Misdescription of articles of food are sometimes dealt with under the Merchandise Marks Act. How widespread may be the effects and how much investigation may be involved are illustrated by the investigation into a misdescription of certain canned plums as Victoria plums. Extensive inquiries were made in five counties, and in the end 184,000 cans were recalled and relabelled. The company concerned was fined and ordered to pay heavy costs.

PRESTON R.D.C. ACCOUNTS, 1957–58

Once again the clerk and chief financial officer of Preston Rural District, Mr. F. B. Young, M.B.E., B.A., F.I.M.T.A., has led the field in the presentation of the annual accounts of his authority—even if only by a short head. The general improvement in the speed with which accounts are now presented is a welcome and encouraging feature of present day local government.

Councillor C. E. Harris, chairman of the finance committee, and his committee men can look forward to the future with considerable confidence: the financial position of their authority is strong indeed. A surplus of £14,200 accrued during the year on the general district revenue account and at the year end the accumulated surplus was £51,900, a goodly portion of which was invested temporarily with other authorities at remunerative rates of interest. The product of a penny rate for the year was £1,683.

The general rate levied was 14*s.* 4*d.* and rates collected equalled 96·5 *per cent.* of the debit. A discount for prompt payment was allowed: it cost £5,300, equal to 1·7 *per cent.* of the total collectible.

The water undertaking had a satisfactory year, resulting in a surplus of £1,150. The accumulated surplus of £3,800 has been credited to the general district revenue account.

Rents produced £60,000, about two-thirds of housing income; the council's rate contribution being limited to £4,070. The housing revenue account carried forward a surplus of £6,650 and the repairs fund credit balance at the year end was £43,300.

The policy of the council is to invest all superannuation fund monies internally.

CITY AND COUNTY OF EXETER CHIEF CONSTABLE'S REPORT FOR 1957

This report is made by the acting chief constable in the absence, on duty in Brighton, of the chief constable. A gain of four in numbers brought the actual strength (125) to within three of the authorized establishment (128).

A good policeman is always on the alert and we note that one member of this force was commended, during 1957, for his astuteness in effecting the arrest, on description alone, of two persons wanted outside Exeter for fraud.

There was a small reduction in the number of recorded crimes, from 852 in 1956 to 833 in 1957. Of this total 523 were detected and 256 adults and 181 juveniles were responsible for them. The juvenile offenders were known to have been responsible for 194 offences, 26 more than in 1956. There has been an increase in the number of juvenile offenders in each of the last three years,

the figures from 1954 to 1957 being 76, 136, 156 and 181 respectively.

When we come to persons prosecuted for summary offences we find a very large increase on the 1956 figure of 739. The 1957 total was 1,196. Motoring offenders increased from 613 to 916, bicycle offenders from 27 to 82 and other offenders from 99 to 198. Comment is made in the report on the great increase in speed offences, from 102 in 1956 to 357 in 1957. It is stated that almost all the roads in the city are obviously in a built-up area, and motorists have no excuse for not being aware of this fact. Moreover, the evidence in most cases shows speeds at least 50 *per cent.* above the legal limit of 30 miles per hour.

The parking problem is also referred to. Rebuilding is reducing the available "off the highway" parking space but in order to keep traffic moving it is essential not to tolerate the motorist who "takes unto himself some 100 *sq. ft.* of the highway for hours." Apart from anything else such people prevent other motorists from leaving their vehicles for reasonably short periods.

In spite of the continually increasing number of vehicles on the roads, Exeter is able to report 13 less accidents in 1957 than in 1956. It is stated that analysis of the accident reports shows that the most frequent cause was turning to the right without due care. The value of instruction to children is shown by a reduction in child casualties from 100 in 1955 to 75 in 1957.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

TRUSTEE STATUS

Section 54 of the Local Government Act, 1958, which received the Royal Assent on July 23, extends the powers of trustees to invest trust funds so as to include the lending of money to, or the purchase of securities created by, local authorities and certain other bodies in the United Kingdom.

This extension will particularly benefit county councils, many of which have been handicapped in their efforts to raise loans as a consequence of an anomaly in the law which virtually precluded them from the trustee status already enjoyed by numerous other local authorities.

It is to be hoped that this change in the law will receive due publicity, as Trustees will no doubt wish to take advantage of the much wider field of investment now made available to them.

I am,
Yours faithfully,
R. H. A. CHISHOLM,
Hon. Secretary.

County Treasurer's Department,
County Hall, Chester.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

VACCINATION AGAINST POLIOMYELITIS

I was interested in your article at p. 512, *ante,* concerning the programme of vaccination against poliomyelitis.

I am wondering how the writer obtained his figures—(*a*) total number of children registered up to June 30, 1958, and (*b*) the considerable number of third injections which have been given. I understand that at present these third doses have not been authorized by the Ministry of Health for the general population and the figure given therefore was a considerable surprise.

Yours faithfully,
P. G. ROADS,
Deputy Medical Officer of Health.

Department of Public Health,
Tower Hill, Bristol, 2.

[We thank our correspondent for drawing attention to this error. The press release upon which we based our note, was misleading to us in the respect that the total vaccinated with two doses was given as 4,481,837, and later in the list the total vaccinated with one dose was given as 856,388. We regret the departure from usual numerical order, coupled with wishful thinking on our part led us to mis-read the one dose for the third. We are informed by the Ministry of Health, who have also pointed out the mistake to us, that since June 30 the present vaccination programme has been completed in most areas, and the only persons registered still awaiting vaccination are a minority who insist on receiving only British manufactured vaccine. No date has yet been fixed of the extension of the scheme for third injections.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I read in "Personalia" on p. 540, *ante,* that Mr. M. P. Pugh would retire shortly from his post as chief prosecuting solicitor for the city of Birmingham.

Mr. Pugh is, of course, very well known and I was particularly interested in your statement that Mr. Pugh could claim, no doubt among many other distinctions, that he was the only local authority solicitor in the country to conduct cases on behalf of the Director of Public Prosecutions.

This is not strictly so, because when I was senior assistant solicitor for the county borough of South Shields, I conducted two cases of murder, one case of murder on the high seas, and several cases of bigamy, for the Director, and no doubt, there are other local authority solicitors in the country who have been similarly honoured by the Director.

I mention this merely as showing that your most valuable and informative journal is read with interest and with minute attention to detail.

M. L. ROTHFIELD,
Town Clerk.

Town Clerk's Office,
Town Hall, Jarrow, Co. Durham.

[We are most obliged to our correspondent. Evidentally the practice (which has much to commend it) is more widespread than we thought.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

LOCAL GOVERNMENT ACT, 1933

Election of Aldermen

I have read with interest your answer to P.P. 9 at p. 455. With respect I suggest that the operative words of s. 66 (1) are ". . . an election to fill the vacancy shall be held not later than the next ordinary meeting of the council. . . ." The section does not say, as your answer states (in line five) that the election must take place at the next ordinary meeting of the council. Therefore, in my view, if the election is held before the date of the next ordinary meeting of the council it will be in order, and if, in fact, the annual meeting of the council is due to be held after a vacancy has occurred and before the date of the next ordinary meeting of the council, then there is no legal reason why the election should not take place at the annual meeting. Moreover, there is nothing in the section which will prevent a local authority from deciding to call a special meeting of the council to fill a casual vacancy in the office of alderman.

I agree that the above argument may not affect the substance of your answer, but I felt that it was necessary to draw your attention to the fact that part of your answer was not in accordance with the correct interpretation of s. 66.

Yours faithfully,
J. R. McLEY SMITH,
Deputy Town Clerk.

Town Hall, Hendon, N.W.4.

[We are obliged to our learned correspondent for reminding us that the preposition "at" in our answer at p. 455 should have been "not later than." Upon the facts in the query the point is however academic, because both the ordinary meetings mentioned in s. 66 (1) had passed, and the annual meeting was out of time.—*Ed., J.P. and L.G.R.*]

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Sutton Dwellings Trust. Report, etc., for 1957. No price stated.

BACK TO THE WAR-DANCE

"Hell," says Don Juan, in *Man and Superman*, "is full of musical amateurs; music is the brandy of the damned." This aphorism may appear to bear the implication that the professionals are to be found in Another Place. However that may be, little satisfaction can have been given to any of them, whether in this world or the next, by a recent news-item from *The Times* correspondent in Bonn, Western Germany. It reads as follows:

> "The Defence Minister, Herr Strauss, has expressed his desire for a Bundeswehr jazz-band, on the ground that jazz expresses positive emotions and contributes to community feeling."

Such a pronouncement, coming from the birthplace of Beethoven himself, must have aroused strong comment from that choleric spirit in his Elysian home. Having been inspired to compose the *Eroica* Symphony by his fervent belief in Napoleon the Revolutionary as the liberator of mankind, he took the coronation of that same Napoleon as Emperor very badly indeed. Tradition relates how, in a fury of disappointed rage, he struck out the original dedication from the title-page, and scrawled at the head of the slow movement the ironical words: *Morte d'un Eroe*—"Death of a Hero." How then, will his turbulent genius react to this outrageous proposal to set the German soldier goose-stepping to the frenzied beat of African jungle-rhythms, echoing from the dance-halls of Harlem and New Orleans?

> "Thus the whirligig of time brings in his revenges."

It is not so many years since the late Reichsführer, in one of his rare lucid intervals, was denouncing contemporary music in general, and jazz in particular, as decadent, degenerate and debased. Today, Western Europe is given up to slavish adulation of all transatlantic institutions, good, bad and indifferent; and now Western Germany is elevating the passionate eroticism of jazz to a "positive emotion," and cacophonic febrility to "community feeling."

If the West German Army is to be equipped with the misguided missiles of the jazz-band armoury, where is the process to stop? Are all the concert-halls of the Federal Republic, from Hamburg to Munich, to replace symphony by syncopation? Is the *scherzo* to be abolished in favour of the skiffle-group? the brass of *Götterdämmerung* by the Blues of Gershwin? Shall the fugues of Bach, the operas of Weber, the concertos of Mendelssohn, the music-dramas of Wagner—and the symphonic poems of the Defence Minister's namesake, Richard Strauss—be neglected in favour of the noisy dissonances of saxophone and percussion, grinding away at some sentimental theme?

"Music," it is said, "has charms to soothe the savage breast." We do not know whether the epithet applies to the average member of the German armed forces; but if the Minister wanted (as *The Times* recently informed us) to replace the Nazi marching-song "*Wir fahren gegen England*" ("We're marching against England") with something less offensive to the Federal Republic's N.A.T.O. Allies, there are plenty of precedents in the musical world. Wagner is generally considered the most Teutonic of composers, and his *Kaisermarsch* (an early work) is military enough for anybody's taste. So, in lighter vein, are the marches in *Tannhäuser* and *Lohengrin*; somewhat more majestic is the *Entry of the Gods into Valhalla* from *Das Rheingold*; while *Siegfried's Funeral March*, in *Götterdämmerung*, though it has unfortunate associations, is slow and pompous enough for most formal occasions. French and Italian music is unlikely to suit the Germany mentality—otherwise Herr Strauss might have adopted the old favourite *Soldiers' Chorus* from Gounod's *Faust*; or the *Triumphal March* from Verdi's *Aida* (a work which is topical enough, since it was written in 1869 to celebrate the opening of the Suez Canal).

But where, when it comes to the point, could the Minister find more suitable material than in the brilliant works of Mozart—though not of German birth, a native of neighbouring Austria? There is the delightful little *March of the Cretan Soldiers* in the second act of *Idomeneo*, and the solemn *Procession of the Priests* in Act III; there is the mock-glorious military tune in *Così Fan Tutte*, and the *March of the Priests* in *The Magic Flute*. But perhaps the best-known of all is *Non più andrai* from the first act of *The Marriage of Figaro*, the theme of which has been adopted as the regimental march of at least one unit of Her Majesty's Forces. And, since Herr Strauss is such an admirer of American institutions, it may not be out of place to recall certain historical connexions.

The *libretto* of *The Marriage of Figaro* was based upon a French play, of the same name, by Pierre-Augustin Caron de Beaumarchais, produced in 1784—a play so revolutionary in outlook that it had been banned by the French Government for six years. What is interesting is that in 1776, two years before it was written, the leaders of the revolt in the American Colonies, against the British Crown, had sent Benjamin Franklin as their representative to the Court at Versailles, for the purpose of negotiating a purchase of munitions of war for their fight against the English troops. Franklin's contact in France was Beaumarchais himself, who was (at that time) not averse from making a little money on the side. Subversion, even against the mother-country, was not, in those days, regarded by the American Colonists with the moral indignation it arouses today; and in 1778, as a result of Franklin's efforts, they entered into an offensive and defensive alliance with the French, the enemies of Britain in the Seven Years' War.

We recommend these historical facts to Herr Strauss's attention. The adoption of *Non più andrai* as the marching-song of the Bundeswehr would be, at one and the same time, a compliment to the revolutionary origins of the United States, and a tribute to a great composer of Austrian, if not of German, blood. Mozart wrote no jazz, but the positive emotions and community feeling are by no means absent from his music.

A.L.P.

NOTICE

On Thursday, October 2, 1958, the Lawyers Christian Fellowship have arranged for a service to be held in the Temple Church at 5.45 *p.m.* It will be conducted by the Master of the Temple, Canon T. R. Milford and the sermon will be preached by The Bishop of Barking.

All lawyers, law students and visitors will be warmly welcomed.

SOLICITORS' ARTICLED CLERKS' SOCIETY

Advance Notice

October 8: Further details will be coming to hand shortly, but please keep the above mentioned date clear in your diary. It has been provisionally arranged to hold the society's autumn dance on this date. One highlight of the evening will be a revue arranged by your members.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Armed Forces—*Affiliation order—Expenses of birth—Enforcement—Army Act*, 1955, *s.* 150.

The regimental paymaster rightly points out that there is no provision in s. 150 of the Army Act, 1955, whereby birth expenses can be recovered by compulsory stoppage.

Section 144 of the old Army Act prohibited the taking out of H.M. Services of a soldier by any process except (*inter alia*) on account of a debt exceeding £30; but I can find no similar provision in the new Act of 1955.

What proceedings, if any, may be taken against a soldier in respect of birth expenses, should he refuse to pay them?

G.J.A.G.

Answer.

We do not accept the paymaster's contention that s. 150 of the Act contains no provision whereby the expenses of birth can be recovered by compulsory stoppage. The phrase used is: "for the payment of any periodical or other sum specified in the order," and the expenses of birth are, in our opinion, quite clearly an "other sum specified in the order" which can be recovered by compulsory stoppage.

2.—Criminal Law—*Obtaining credit by fraud or other false pretence—Debtors' Act*, 1869, *s.* 13—*Form of information.*

In *R.* v. *Perry* (1946) 110 J.P. 100, it was held that a count alleging the obtaining of credit under false pretences or by other fraud was not bad for duplicity, as one offence only is charged. Having regard to this, why do *Archbold* and *Oke* give two examples for the purposes of an information showing the credit to have been obtained either (i) by false pretences or (ii) by means of fraud other than false pretences. I find that when an application for a warrant or summons is made, the magistrates' clerk insists on the informant deciding whether the credit was obtained (i) under false pretences, or (ii) by means of fraud other than false pretences and making out the summons or warrant accordingly. In a case where the informant decided to proceed as in (ii) the court decided that the fraud amounted to false pretences and dismissed the charge. Was this right? Why, if counts or informations are good where the credit is shown as having been obtained under false pretences, or by other fraud, do *Archbold* and *Oke* suggest that this should be split and the informant decide on one or the other?

F. RASMON.

Answer.

While we agree that *Oke* seems to imply that only one of the two alternatives should be stated, we cannot understand our correspondent's reference to *Archbold*. In *Archbold*, 33rd edn., p. 1348, it is clearly stated under "particulars of offence," ". . . obtained credit to the amount of £25 from the said J.N. under false pretences or by means of fraud other than false pretences," and the authority cited for this is *R.* v. *Perry, supra.* It is respectfully suggested that it is wrong to insist that an information should show only one of the alternatives. In the case to which our correspondent refers, the prosecution should have sought to amend the information. We can only assume that the court dismissed the information because the prosecution failed to prove an element in the offence it had elected to rely on.

3.—Criminal Law—*Obtaining credit by fraud—Debtors Act*, 1869, *s.* 13—*Hire of car—Inability to pay.*

A is the owner of a motor car which he hires out to people, payment for such hire being made at the end of the period of hiring. B, who is unemployed and does not have the means to pay for the hire of the car, wishes to hire A's motor car and, upon applying to A for such hire, he informs A that he is in employment, is earning good wages and has the means to pay for the hire.

On the strength of this statement and accepting it as being true, A hires the car to B for an agreed period at an agreed sum per day, no deposit being paid at the commencement of the period of hiring.

At the end of the period of hiring B does not pay for the hire of the car and does not have the means to do so.

B is now charged that, in incurring a debt to pay to A the amount due for the hire of the car, he unlawfully did obtain credit of A under a false pretence, contrary to s. 13 of the Debtors Act, 1869.

Can B, in your opinion, be convicted of this offence?

May I draw your attention to the following when you are considering the matter:

1. The article "Bilking as credit by fraud," at 114 J.P.N. 445.
2. The following cases: (*a*) *R.* v. *Edwards* (1898) 42 Sol. Jo. 472. (*b*) *R.* v. *Mitchell* [1955] 3 All E.R. 263. (*c*) *R.* v. *Garlick* (1958) 42 Cr. App. R. 141.

G.T.P.E.

Answer.

We think that B has committed the offence of obtaining credit by fraud. It is a stronger case than the one dealt with in the article referred to inasmuch as there are three mis-statements of existing facts. The article relied as far as it could on *R.* v. *Edwards, supra.* The other two cases cited were decided on different points and we do not think they affect the present case.

4.—Husband and Wife—*Maintenance Orders (Facilities for Enforcement) Act*, 1920—*Provisional order—Child over* 16—*Payments back-dated—Can order be confirmed?*

A provisional order made on December 31, 1957, by a juvenile and family court in Canada under the Deserted Wives and Children's Maintenance Act was received by me for registration on May 8, 1958, and to issue process calling upon the defendant under s. 4 of the Maintenance Orders (Facilities for Enforcement) Act, 1920, to show cause why the order should not be confirmed.

This is an application by the wife for the maintenance of a child of the marriage which was born on January 28, 1942; both are resident in Canada and the husband within the jurisdiction of my justices.

The provisional order provides for the payment of $30 per month until the child reaches the age of 16 years, the first payment to date from December 13, 1957.

On May 3, 1957, my justices refused to confirm a provisional order made in favour of the wife for her maintenance and that of her child on the ground that she had committed adultery.

Having regard to that decision the only course open to her to obtain maintenance for the child were she resident in this country would be under the Guardianship of Infants Acts, 1886–1951, and s. 7 (1) (*a*) of the Guardianship of Infants Act, 1925, provides that a court of summary jurisdiction shall not be competent

(*a*) to entertain any application other than an application for variation or discharge of an existing order under the Guardianship of Infants Act, 1886, as so amended, relating to an infant who has attained the age of 16 years, unless the infant is physically or mentally incapable of self support; . . .

There is no evidence in this case to suggest that the child is so incapable of self support.

Paragraph 7 (*b*) of Home Office circular 469,726/4 of June 15, 1925, which is an explanatory booklet relating to the Maintenance Orders (Facilities for Enforcement) Act, 1920, states that a provisional order made by an overseas court takes effect (subject to any modification made in it) from the date on which it is confirmed in this country under s. 4, . . .

It is my contention that, upon the date when the matter comes before my justices for confirmation, the evidence transmitted from Canada is subject to the same limitations as it would be if the complainant appeared in person and that the application could not be entertained by virtue of s. 7 (1) (*a*) referred to above.

Do you consider my justices can:

(*a*) Hear and determine this application for confirmation?

(*b*) If so, whether payments should be made from December 13, 1957, or the date on which the provisional order was made.

I shall be obliged if you are able to refer me to any case law on this subject.

GORNO.

Answer.

The Maintenance Orders (Facilities for Enforcement) Act, 1920, embodies a code of procedure of its own. In this case, the terms of the provisional order are governed by Canadian law and any English statute, apart from the 1920 Act, has no relevance as far as the question of confirmation is concerned. (*See Peagram* v. *Peagram* (1926) 90 J.P. 136). The justices may confirm the order with or without modification, depending on the evidence before them (s. 4 (4) of the Act). In the present case, the justices can (*a*) hear and determine the application for con-

firmation; (*b*) in their discretion, make the payments run from any date they think fit. We assume that December 13, 1957, has been chosen as being the date of the wife's complaint for the provisional order as it is a common practice in the Dominions to back-date payments to the time of the complaint.

5.—Licensing—*Occasional licence: special order of exemption—Application to be made on regular court day.*

My justices sit fortnightly and applications are made for consents to occasional licences and for special orders of exemption on those dates. It happens from time to time, however, that a licensee wishes to make an application to the justices between the regular courts. It is a matter of considerable inconvenience to the justices to have to attend from a distance to hear the applications. Are the licensing justices entitled to refuse to hear any applications under these headings except at their usual fortnightly courts, or are they bound—if a licensee so desires—to hear the applications not on their usual court days?

NOSEP.

Answer.

This question has arisen many times in rural petty sessions areas where regular courts sit infrequently and usually it is settled by methods of give-and-take between the applicants and the justices. Applications for consent to occasional licences and special orders of exemption are to be made to justices (*not* licensing justices) for the petty sessions area in which the facility will operate sitting in the place where they are required to sit for the hearing of a complaint (Licensing Act, 1953, ss. 148 (4); 108). There is nothing in the law to suggest that justices are bound, at the desire of an applicant, to sit on any day other than their regular court days. It is, however, a matter for comment that the hearing of applications for these licences is part of the ordinary business of a magistrates' court, and if our correspondent's problem is acute there may be ground for considering whether courts should not sit more frequently in order to meet the needs of the neighbourhood.

6.—Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (2) and (3)—*Application for relief made in* 1958—*Notice to terminate relief.*

An application has recently been received from a charitable organization for relief under s. 8 (2) of this Act, in respect of a hereditament which they have occupied for a number of years as tenants, and which they now occupy as owners. No claim has previously been made whilst the organization were tenants, although the premises are such as would bring them within the section. All the other organizations which have been granted relief under the section were served with a notice before March 31 this year, telling them that the limitation imposed by s. 8 (2) with regard to the amount of rates chargeable would cease on March 31, 1961. If the present application is granted, it is not possible to give a similar three years' notice to terminate the arrangement on the same date.

Can you please say:

(i) whether an application can now be received and relief granted; and

(ii) if so, whether a notice can be served now telling the organization that the relief will cease on March 31, 1961; or whether if such notice is served it cannot take effect until March 31, 1962.

CASAM.

Answer.

(i) Yes, in our opinion.

(ii) The rating authority's notice can be served at any time after s. 8 (2) (*b*) has taken effect upon the hereditament, but it must run the full 36 months from the following March 31.

7.—Road Traffic Acts—*Driving licence—Avoiding need for a provisional licence by driving in this country on a Northern Ireland licence.*

I should be greatly obliged if I could have your learned opinion on the following circumstances:

X, who is a permanent resident in this country, visits Northern Ireland for holiday, and although he is not a "competent" driver, he obtains a substantive licence. Under the provisions of s. 32, Road Traffic Act, 1930, these are valid in this country, and this appears to be a very serious loop-hole in the legislation.

On any attempt on the part of X to renew the licence in this country he would have to pass a test. But if he chooses to go to Northern Ireland yearly it seems that he need never have to submit to this. Can you say:

1. If provisional licences are issued in Northern Ireland. If so, are they valid in this country and are the driving conditions similar?

2. If X has made a false declaration on his application form in Northern Ireland, would he have to be dealt with there?

3. Are provisional driving licences issued in this country valid in Northern Ireland?

KONIR.

Answer.

We answered a question about a Northern Ireland licence at 121 J.P.N. 122, P.P. 8.

1. We understand that now in Northern Ireland provisional licences are issued and driving tests are conducted very much in the same way as in this country. We think that a provisional licence is not a licence to drive a motor vehicle within the meaning of s. 32 of the Act of 1930, and that a Northern Ireland provisional licence is not valid here.

2. Yes.

3. We think not.

8.—Slaughter of Animals Act, 1933, s. 3—*Slaughter of Animals (Amendment) Act,* 1954—*Test of competence.*

Section 3 (1) of the Act of 1933 prohibits the slaughtering or stunning of an animal by a person who is not the holder of a licence granted by the local authority. A licence may be granted by a local authority to a person 18 years of age or upwards who is, in their opinion, a fit and proper person to hold such a licence. Before the granting of a licence officers of some local authorities insist on an applicant's slaughtering one or more animals as proof of his fitness to hold a licence thereby, it seems, aiding the commission of an offence under s. 3 (1) of the Act of 1933. Bearing in mind the right of an applicant to appeal against refusal to grant a licence, will you please advise what other test of fitness may be applied to a person who has not hitherto held a licence?

BARUP.

Answer.

The questions asked, as alternatives, are part of a problem set by s. 3 to which there is no theoretically complete answer, since the apprentice or assistant cannot become fully proficient without practice. In some areas he can be instructed with dummy heads, or carcases, and may be able to kill an occasional animal for practice, or undergo a test of competence on a live animal, in premises other than a slaughter-house as defined by the Act. Where this is not possible, we see nothing for it except to look into his experience as an assistant, or as a pupil at a technical school, and let him demonstrate what to do upon a carcase.